

Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 1/22/10, applicant amends claims 1, 14 and 20 to add the limitation " wherein the starch has been substituted with succinate". This limitation is not supported by original disclosure. Example 1 of the specification discloses preparation of a starch succinate derivative, but it is not discloses anywhere in the specification the type of derivative. The specification does not disclose that the succinate is substituted for a group in the starch. There is no disclosure of " starch has been substituted with succinate".

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Judkins et al (6033697) in view of Carver et al (6777015).

Judkins et al disclose a coated frozen par-fried potato product and process of making the product. The process comprises the steps of cutting potato into pieces, blanching the pieces, contacting the pieces with an aqueous solution of one or more hydrocolloids, coating the pieces with an aqueous starch-based batter and frying the coated pieces. Suitable hydrocolloids include starches, modified starches, gum, dextrin etc... and mixtures thereof. The starch batter may contain one or more starches and flours such as wheat flour. The par-fried product is frozen and is prepared for

consumption by finish frying. (see col. 2 lines 16-53, col. 3 lines 50-55, col. 4 lines 64-67 and col. 5

Judkins et al do not disclose the starch is substituted with succinate and the characteristics of the starch as in claims 3-7, the percent of fat reduction, reconstitution by oven heating, blanching in water containing the starch as in claim 20.

Carver et al disclose a co-processed composition containing a combination of modified starch and flour. The sources for the starch include corn, potato, wheat, rice, tapioca etc... The base starch for modification includes conversion products including fluidity or thin-boiling, thermal, heat and or acid dextrinization etc., The modification includes succinate and substituted succinate derivatives or starch. Stabilized starch including starch octenylsuccinate can also be used. The composition demonstrates a combination of desirable appearance, taste, process tolerance, emulsification, cold and hot temperature stability and instant viscosity properties. The composition can be used in products including batters, coatings, glazes etc... (see col. 3 , col. 5 lines 18-22, col. 6 lines 41-47)

Judkins et al teach to coat the pieces with a starch batter comprising starch and flour; thus, it would have been obvious to one skilled in the to use the composition of Carver et al in the starch batter of Judkins to obtain the superior properties taught by Carver et al. The Judkins et al product is subjected to frying, freezing and finish frying; thus, the cold and hot temperature stability of the Carver et al composition is especially advantageous. Since Carver et al disclose starch substituted with succinate and can also be converted, it is obvious the starch has the characteristics in claims 3-4. Since

Art Unit: 1781

Carver et al disclose starch substituted with succinate, it is obvious the starch is prepared using the amount of succinic anhydride as claimed. In any event, modification of starch is well known in the art; thus, it would have been within the skill of one in the art to determine the appropriate amount of reagent without undue experimentation.

Judkins et al in view of Carver et al disclose the same coating as claimed; thus, it is inherently obvious the same fat reduction is obtained. It would have been obvious to reconstitute by oven heating when desiring to avoid the additional fat obtained by finish frying. This would have been readily apparent to one skilled in the art. Judkins et al teach contacting with a solution containing one or more hydrocolloids; this is the same as the blanching step of claim 20 because it is contacting the pieces with solution containing water; the claim does not exclude additional blanching step. The hydrocolloids can be modified starches; thus, it would have been obvious to use the Carver et al composition in the hydrocolloid solution to obtain the benefits disclosed by Carver et al.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keijbets (6635294) in view of Carver et al (6777015).

Keijbets disclose a frozen, fried potato product and a process of making it. The process comprises the steps of forming potato into pieces, blanching the pieces, contacting the pieces with an aqueous solution in which flour batter is added to coat the pieces, pre-frying the pieces and freezing the pieces. The flour batter contains flour, starch, dextrin, leavening agent, thickening agent etc.. (see col. 3 and 4)

Keijbets does not disclose the starch is substituted with succinate and the characteristics of the starch as in claims 3-7, the percent of fat reduction, reconstitution by oven heating, blanching in water containing the starch as in claim 20.

Carver et al disclose a co-processed composition containing a combination of modified starch and flour. The sources for the starch include corn, potato, wheat, rice, tapioca etc... The base starch for modification includes conversion products including fluidity or thin-boiling, heat and or acid dextrinization, thermal etc... The modification includes succinate and substituted succinate derivatives or starch. Stabilized starch including starch octenylsuccinate can also be used. The composition demonstrates a combination of desirable appearance, taste, process tolerance, emulsification, cold and hot temperature stability and instant viscosity properties. The composition can be used in products including batters, coatings, glazes etc... (see col. 3 , col. 5 lines 18-22, col. 6 lines 41-47)

Keijbets teaches the flour batter comprising starch and flour; thus, it would have been obvious to one skilled in the to use the composition of Carver et al in the flour batter of Jeijbets to obtain the superior properties taught by Carver et al. The Keijbets product is subjected to frying, freezing and finish frying; thus, the cold and hot temperature stability of the Carver et al composition is especially advantageous. Since Carver et al disclose starch substituted with succinate and can also be converted, it is obvious the starch has the characteristics in claims 3-4. Since Carver et al disclose starch substituted with succinate, it is obvious the starch is prepared using the amount of succinic anhydride as claimed. In any event, modification of starch is well known in

the art; thus, it would have been within the skill of one in the art to determine the appropriate amount of reagent without undue experimentation. Keijbets in view of Carver et al disclose the same coating as claimed; thus, it is inherently obvious the same fat reduction is obtained. It would have been obvious to reconstitute by oven heating when desiring to avoid the additional fat obtained by finish frying. This would have been readily apparent to one skilled in the art. Keijbets teaches contacting with a solution containing the flour batter; this is the same as the blanching step of claim 20 because it is contacting the pieces with solution containing water; the claim does not exclude additional blanching step.

Claims 1, 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shi et al (US2003/0099744).

Shi et al disclose a food composition comprising a food portion and a coating comprising starch succinate that is converted. The starch can be a pregelatinized starch. (see paragraphs 0015, 0017, 0024, 0040)

Shi et al do not disclose the food composition is a fried composition.

It would have been obvious to one skilled in the art to make a fried composition when wanting food having different texture and flavor. Both baking and frying are well known cooking process in the art and the selection of which depends on the fat content, calorie content, taste, texture, flavor etc.. wanted.

In the response filed 1/22/10, applicant argues that the object of Shi's invention is to provide a glaze that is effective when applied after cooking; thus, there would be no motivation to apply a glaze composition of Shi to a food prior to frying it. The point of

Art Unit: 1781

applying before frying or after frying is not germane to the issue at hand because the claims rejected are directed to the food product, not a process of making it. Shi teaches to apply the glaze to many different food products including but not limited to pastries, snack, pie, snack products, confectioneries etc... Many of these food products can be fried if a fried texture is wanted. There is no disclosure to conclude that the glaze cannot be applied to food products that have been fried. It would have been obvious to apply to glaze to fried food product to obtain the benefits of the glaze of providing a sheen and surface seal on the fried products. Applicant's comment about the reduction in fat content is not commensurate in scope with the claims rejected over Shi because none of the claims recites anything about fat reduction.

The change in the rejection is necessitated by amendment.

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 8, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1781

Application/Control Number: 10/646,429
Art Unit: 1781

Page 9